Wake Forest Jurist

Vol. 5. No. 2 Winston-Salem, N.C. Spring, 1975

FEATURE: WOMEN IN LAW

WAKE FOREST JURIST

Vol. 5, No. 2 Spring, 1975

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STATEMENT OF PURPOSE AND POLICY

The *Wake Forest Jurist* is published twice yearly by the Wake Forest School of Law of Wake Forest University. Its main purpose is to inform the friends and alumni of the Law School about activities and events of interest at the Law School, of recent important decisions by the courts of North Carolina and other jurisdictions, and news of the achievements and activities of fellow alumni. In this way the Jurist seeks to provide a service and a meaningful link between the School of Law and its alumni. Also, the magazine shall provide an outlet for the creative talents of students and an opportunity for legal writing by them. Opinions expressed and positions advocated herein are those of the authors and do not represent official policy of the School of Law.

A MESSAGE FROM THE DEAN

One of the most significant events of the current Law School year has been the establishment of the Wake Forest Institute for Labor Policy Analysis (WILPA) by the University's Board of Trustees at its December meeting. Designed as a permanent research organization, WILPA's purpose, as its name implies, is to analyze current problems in labor law and labor management relations, to publish studies, and to put forward proposals for constructive change. It has been founded on the premise that one of the most serious deficiencies in labor relations law today lies in a simple lack of information, especially of pointed information illuminated by an objectively critical understanding of the real significance of events. Vitally important developments in labor relations are all too infrequently analyzed comprehensively, and rarely within a coherent framework of standards and principles. WILPA will seek to remedy these deficiencies in a variety of scholarly ways, always within the framework of an objective rule of law and of a basic commitment to freedom, responsibility, and progress in labor relations.

The initial Director of WILPA is Professor Sylvestor Petro, who joined our faculty in September 1973. Professor Petro is a seasoned scholar and law teacher and a prolific author with a long-standing reputation as a specialist in labor relations law and policy. He will be assisted initially by an Administrative Assistant, Mrs. Shirley Anders, and by several law students who will work as research assistants. A distinguished group of consulting scholars has agreed to serve WILPA in an advisory capacity. The consulting scholars include Professor Yale Brozen of the University of Chicago, Professor John W. Kendrick of George Washington University, Professor John Moorhouse of Wake Forest University, Professor G. Warren Nutter of the University of Virginia, and Professor Gordon Tullock of Virginia Polytechnic Institute.

WILPA is, so far as I know, the only organization of its kind — an academically connected, purely objective agency whose mission is to devote serious and sustained attention to the legal and economic consequences of our labor laws, policies, and practices. In assuming this task with the heavy responsibilities it entails, Professor Petro and his staff are undertaking, in my opinion, a profoundly valuable public service. Those of you interested in this field who wish to know more about WILPA's current projects and its plans for the future are invited to get in touch with Professor Petro.

The Student Bar Association has planned an excellent program for Law Day on Saturday, April 5. I hope that many of our alumni will be present for this occasion.

The Law School Board of Visitors will be meeting that same weekend. The Board is planning to host a special reception for the 1975 graduates and their wives/husbands/dates prior to the Law Day Banquet on Saturday evening.

To round out the events of Law Day weekend, SCRIBES, the national organization of writers on legal subjects, will present an Institute on Legal Writing at the Law School on Saturday, April 5. The program is designed to assist an encourage present and future legal authors by covering a cross-section of problem areas in legal writing. This Institute is open to all interested persons. A registration fee will be charged by SCRIBES to cover the costs of the program.

It gives me a great deal of pleasure to announce that Harold R. Wilson, '58, and his wife Jean have established a substantial scholarship fund for students in the Law School. The first awards from this fund will be made in the fall of 1975. Additional scholarship funds are one of our greatest needs, and I wish to take this means of expressing on behalf of the Law School Community, our gratitude to Mr. and Mrs. Wilson for their generous gift.

I also wish to use this column to express my personal thanks to the students whose dedicated work makes the *Jurist* possible. Editor-in-Chief Rick Gabriel and his staff have done a superb job, and are to be highly commended for the valuable service they have rendered in writing and editing this magazine during the current year. The *Jurist* is, of course, entirely a student publication, and its student editors, like their counterparts on the Law Review and the Moot Court Board, serve without compensation. I am confident that I speak for all the readers of the *Jurist,* in saying that we appreciate their efforts.

THE EDITOR'S PAGE

Women's role in society has come under increasing scrutiny in the past few years. With the Equal Rights Amendment once again before the North Carolina Legislature, it is appropriate that the *Jurist* present a feature series on prominent female members of the bar, who have distinguished themselves in their involvement in the legal profession. Interviews, accompanied by brief biographical sketches, of local, state, and national figures present a diversity of views on discrimination, job opportunities, and career potential within the legal profession. Many of the comments are revealing of the attitudes held by the very persons who should be most interested in equlity before the law. Our readers will certainly enjoy this group of articles, the result of many hours of work by Rebecca Ferguson, Law School News Editor, and Dale McAnally, editor-elect.

I should mention that all of the editors-elect have contributed substantially to this edition of the *Jurist.* Norman Kohl is Editor-in-chief and Dale Glendening is Managing Editor, with Dan Khoury as Legal Articles Editor, Dale McAnally as Law School News Editor, Dewey Edwards as Alumni Editor, and Bill Boney as Graphics Editor. These people continue the Jurist tradition of editorial experience in a variety of related fields, and will certainly continue to improve the quality of the magazine. They have associated themselves with competent staff members who continue to produce quality material.

Of course, a large contribution is made by the administrative staff of the law school itself. In this issue, the Jurist presents an informative article on the people perform those daily tasks that make any organization run effectively. Many of the faces will be familiar to alumni and students. Certainly all recognize and appreciate the work performed by the administration.

The Student Bar Association has put together a new event for those receiving the Juris Doctor degree this year. Tentative plans call for a hooding ceremony to be conducted on May 18, the day before graduation ceremonies. A distinguished speaker has been invited to address the graduating class after the hooding ceremony takes place. Alumni and friends planning to attend graduation ceremonies this year may wish to contact the Law School concerning time schedules.

Uncertainty seems to be a popular theme this year, as the article on employment illustrates. A polling of the third year class yielded interesting results, which may be found in the Alumni section of the magazine. Alumni may wish to take note of the considerable number of change of address notations in this section.

This being my fifth and final semester with the *Jurist,* I would like to take this opportunity to express my appreciation for the aid and assistance from the many staff members, and former editors, rended in producing the *Jurist.* I hope our readers find the magazine a useful service, both as a means of expressing student opinion and talent, as well as an informative link with alumni. There is always room for improvement, and I look forward to future issues.

LAW SCHOOL NEWS

LAST BASTARD CLASS

John R. Cresenzo

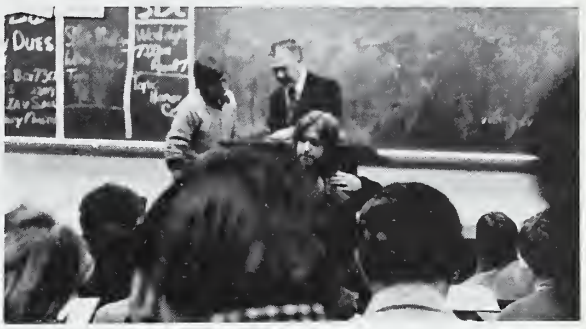
After more than thirty years, the School of Law has welcomed its last group of students entering under its January admissions program. The January admissions program, originated during World War II to enable career-minded veterans to fill empty classroom seats, has been phased out due to the recent boom in law school applications, the increasing costs of providing the required summer session for "accelerated" students, and scheduling difficulties.

The School of Law has completed the January admissions program by once again admitting a group with outstanding credentials. Although there was a 19% decrease in the number of applications from the preceding year, there were 146 applicants for the seats occupied by the nineteen men and four women who make up the incoming January 1975 class. As an undergraduate, the typical entrant had approximately a 3.1 cumulative grade point average on a 4.0 scale and scored approximately 613 on the Law School Admissions Test. The newcomers hail from eighteen colleges and universities, and 35% are married. North Carolina natives make up a majority of the class, with a 61% representation. There is one minority racial group representative in the incoming group.

It is evident that the School of Law could not have selected a more qualified or exemplary group with which to complete the program.

PROFESSOR LEE TO ATTEND CONFERENCE

Professor Robert E. Lee, distinguished author of *North Carolina Family Law,* has been invited to attend and lecture an eight-day conference on family law to be held in Berlin, Germany, from April 6th to April 13. He will lecture on the changing attitudes in the United States towards illegitimate children. Professor Lee has taught one of the more popular elective courses at the Law School for many years, "Domestic Relations."



FEDERAL COURT COMES TO LAW SCHOOL

by Henry V. Ward, Jr.

On the first day of spring semester, federal court came to campus when a three-judge panel heard cases in the law school Courtroom. On January 13, Judges Craven, Gordon, and Ward of the U.S. District Court, Middle District of North Carolina, convened hearings at nine o'clock, adjourning before one. The docket included two separate actions by common carriers against the Interstate Commerce Commission and two actions presenting constitutional questions. Seventeen attorneys represented the litigants in the four cases.

The last scheduled hearing drew the largest student interest in advance. Popularly termed the "Spanking Case," the action contested the constitutionality of a North Carolina statute which permits corporal punishment in the state's public schools.

Law students were strongly encouraged to observe the proceedings, to the extent their schedules would permit. Some who attended commented on the tone of the hearings—calm, reasoned, and without the adversary hostility the students had expected. Some remarked that the session reinforced their career plans to engage in trial work. First - and third-year class schedules allowed opportunities to observe the proceedings, but a three-hour block of class meetings kept second-year students away.

Faculty members and students, nothing the educational advantages of hosting court-for-a-day, regretted that conflicts in scheduling prevented a larger student attendance. If continued, the program will broaden students' practical education at Wake Forest by supplementing the strictly academic phases of the curriculum.

WOMEN IN LAW

1974-75 has seen the formation of a new law school organization. Interested students with varied ideas for utilizing their law skills have come together to create the Wake Forest Women In Law. The purpose of the association is to bridge the gap between classwork and fraternity fun to provide an outlet that incorporates both, for the benefit of ourselves and those less privileged. The major theme thus far has been to inform ourselves and others of the legal conditions facing women in all parts of our society. The second developing theme is our role as law students and potential attorneys in alleviating the more inequitable conditions.

Any member of the legal community interested in our present committees and projects or who has an idea he/she would like to see activated into a working entity is invited to join us.

Committees Report:

Speakers: Gary Corn and Cama Merritt have done a tremendous job in schedualing speakers on controversial topics of today. Nancy Drum, Winston-Salem coordinator of ERA; Patricia Marschell, Professor of Law at Duke University; Karen Welch, Founders of Winston-Salem Women against Rape; Thorns Craven, Director of Winston-Salem Legal Aid Office; Elisabeth Petersen, Durham attorney who handles discrimination cases.

Curriculum: Tom Williams has just begun working to collect information on courses enjoyed by law students in other schools and not taught at Wake. We hope to interest the administration in incorporating this information into new ideas in course material.

Placement – Addie Behan is working with the school placement office to help push our women graduates into meaningful and enjoyable careers.

Susan Morice, Becky Ferguson, and Linda Bridgman were delegates to the Third Southeast Regional Women and the Law Conference in Athens, Ga. Jan. 24-25.

The big project for the year was a recruitment-career planning weekend held March 21-23. Undergraduate women from across the state and Winston-Salem area high school students were invited to join us for a day of classes and seminars with women alumea and attorneys of the state.

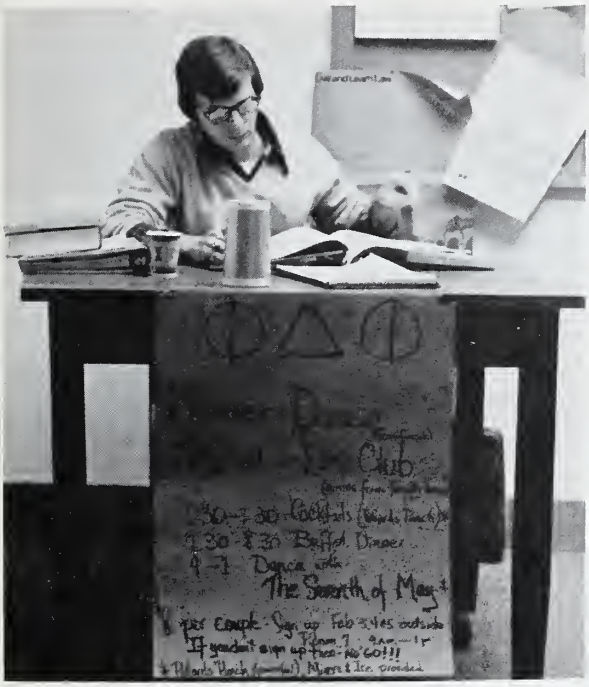
Admissions and Recruitment: Ann Spain, Janice Scott, and Mary Murrill have and a great time visiting undergraduate women's schools to interest young women in entering the career of law. They have visited Agnes Scott in Ga., Meredith in Raleigh, and Sweet Brier, Mary Baldwin, Randolph-Macon, and Radford in Virginia.

Committees:

Legal Aid Clinic – Elva Jess has headed up an organization of students to work at the Winston-Salem Legal Aid Office. Working in cooperation with the Student Bar Association, she has coordinated interest into a program worth while to all concerned.

Community liason projects – Susan Morice and Judy Lambeth worked withthe Winston-Salem YWCA to create a two-part program on (1) the pros and cons of the Equal Rights Amendment, and (2) the psychological effects and prevention of assault on women. The project was well-received by many women of the community. A program on North Carolina prisons for women is suggested for next year.

We think 1974-75, the year of our founding has been a terrific year for Wake Forest Women In Law and we look forward to even greater achievements in the future.



PHI DELTA PHI NEWS

The members of Phi Delta Phi are now recovering from its belated Christmas Party which took place on February 14th and which proved to be an overwhelming success. Pollard's Punch and the Seventh of May (with Bob Benson as lead singer) were combined with a formal dinner-dance — the Elk's Club now knows that aspiring young attorneys have not forgotten the true joys of life!!

Rush was outstanding this year, with a pledge class of approximately 55 and the fraternity now stands 150 strong. Bill Young (second Year) and Clark Smith (third year) were the winners from Ruffin Inn in the national Scholarship Award and consequently, the Inn received a matching grant. Also in the news column: Province IV, of which we are a member, is trying to coordinate a combined initiation among its chapters. Mary Murrill met with the Province Director, Dean Hamrick; an alumnus, Ed Harper; and the two magisters from Duke and UNC to make initial arrangements. This event is tentatively set for March 21st and will entail an initiation in the Supreme Court Chambers in Raleigh, followed by a dinner and a dance. And last, but not least, the Tanglewood Steeplechase weekend is in the makings for April 18th and 19th. All alumni are warmly welcomed to join the festivities.

PHI ALPHA DELTA REPORT

David C. Francisco
Justice

Timberlake Chapter of Phi Alpha Delta Law Fraternity International has elected its new officers for 1975-1976 at the initiation ceremony held on February 13, 1975 at the Forsyth County Superior Court. Elected to the office of Justice was George Kaneklides; to Vice Justice, Walt Etringer; to Treasurer, Alice Patterson; to Clerk, Janice Scott; and to Marshal, John Kummer.

Installation of the new officers will be at the next regularly called meeting of the chapter. At the ceremony sixteen new Brothers and Sisters were initiated representing the first and second year classes of the law school.

Mention should be made of past Justice Robert Morgen's election to the U.S. Senate from the State of North Carolina. Brother, now Senator, Morgan attended Wake Forest Law School from 1947 to 1950. He was Timberlake's Alumnus of the Year this past year, the second time this honor has been bestowed upon him.

Plans are under way for the Second Annual Timberlake Chapter Golf Tournament. Brothers Frank Todd, Sr. and Frank Todd, Jr. have graciously extended an invitation to the fraternity to come to Hendersonville again in April for the event. Last year's tournament proved to be one of the chapter's all-time great activities.

The chapter library, plaques and mementos of the Fraternity once again reside in Kitchin Dormatory, where they started several years ago. The move from Huffman was made this past fall in accordance with the decision of the University. Few of the current members knew that the portion of Kitchin Dorm now occupied by the law students is where Timberlake Chapter had its Chapter House.

New officers and members are currently making plans for Timberlake's Annual Spring Banquet to be held in April. Decisions must be made as to the awards of Brother of the Year, Alumnus of the Year and Honorary Initiate for 1975.

All members are eagerly looking forward to the coming year and the chance once again to serve the school, the community and the profession.

ADMINISTRATIVE STAFF

Bob Manuel

While most law school students ane alumni are kept aware of the presence and influence of the professors and administrators of the school, another group of trained, dedicated personnel, whose service is also essential to the administration of the school, has lacked the appreciation and recognition which they deserve. In this brief article, we shall attempt to recognize a few of the secretaries and assistants who provide this continual service to all members of the law school.

Mrs. Laura Myers, a 15 year veteran of the law school, provides a valuable service to the law school in her position as Registrar. Her many duties encompass general secretarial work including coorespondence and filing, as well as the more demanding work as receptionist, preparer of statistical reports, reporting of grades, and the handling of the personal problems of students.

Joyce Hensley, secretary to Professors Walker, Corbett, and Billings, must type all the correspondence of these professors, as well as type both National and International Moot Court briefs, articles for periodicals, and class materials.

Millie Berthrong, who shares the office with Joyce, is secretary to Professors Farris, Oleck, Lee, and Divine. Besides general secretarial duties, she also types material for legal periodicals and legal books.

Lois Mende, secretary to Professors Bell, Webster, Lauerman, and Sizemore, keeps busy transcribing from dictation, typing examinations, and preparing mailings.

Shirley Anders, who is employed in the Institute of Labor Policy Analysis, aids Professor Petro in correspondence, as well as makes preparations for labor seminars, and edits manuscripts. She is currently preparing a brochure on the Institute.

Shirlea Scarborough, a new addition to the law school staff, is a native of Colorado. While working for both the Labor Institute as well as the Dean's Office, she has general secretarial duties, as well as the filing of labor law periodicals and articles. She recently finished preparing the Moot Court handbook. Mrs. Scarborough mentioned that the people in this area were "really friendly".

Julia Zimmerman, another new face at the law school, is employed in the library offices. Her principal duties include library service in checking in books and periodicals, ordering books and stamping them when they arrive. She is also the "expert" on Xerox machines.

Jeanne Wilson, in charge of the Admissions Office, is the supervisor of the admissions filing system. She corresponds with the applicants, making sure that they have on file the necessary transcripts and reports, and mentions that she often gets to know the students through the mail, although she has never met them personally. The law school is currently receiving nearly 1100 applicants yearly.

Doris Tyson, another Admissions Office employee, handles phone communications, mails out admission information and bulletins, and files admission information.

Mary Musick, secretary to Professors Rose and Bond, has the duty of typing material for the 1st year classes, accepting and returning the papers of students. Mrs. Musick is also known to listen to any problem which a student might have, and offer helpful, friendly advice.

Sandra O'Neal, who works in the Placement Office, assists students in maintaining resumes on file, typing and mailing correspondence with law firms, and assisting in scheduling interviews.

Melanie Nutt, employed in the law review office, has general secretarial duties, coupled with the added responsibilities of typing and proofreading law review articles. This is her 5th year at the law school.

Vicky Adams, who works in conjunction with the Dean's Office, has general secretarial duties, and is especially knowledgeable in the operation of the new electronic memory typewriters.

In conclusion, we want to recognize these members of the law school staff who assist both the professors and students, and add a personal touch to their work.

STUDENT BAR COUNCIL REPORT

Henry A. Harkey, Chairman, SBC

Two important proposals are now before the student body for a vote. One is an amendment to the constitution changing the method by which officers and representatives are elected to the Council. The other proposal is the written honor code. Both the proposals are the result of many hours of committee work and much debate by the full Council. The election amendment would provide for election of the SBC officers by the entire student body in a general election rather than by the elected class representatives as is now the practice. The honor code would provide a student charged with an honor code violation the right to elect to be tried by other students instead of the faculty, which is the current practice.

The largest single item is the SBC budget is LAW DAY. This year LAW DAY will celebrated on April 5, 1975, due to the early exam schedule, with the festivities being held in the Benton Convention Center in Winston-Salem. A buffet dinner will be served at 7:00 p.m. and will be followed by an 8:30 program including the presentation of the Outstanding Alumni Award and an address by our guest speaker. A band will play from about 10:00 until 1:00 a.m. Reservations will be taken by mail: fill out the blank contained in the letter sent out earlier to all alumni and return it with your remittance to the SBC office at the law school.

Before the term of office ends for the present Council members on April 5, there are several areas of student interest which will be discussed and in which proposals will be made. These include: evaluation of faculty members; establishment of a legal aid center at or through the law school; and the revival of a book exchange whereby departing students may sell their used books to remaining students. Another topic which will receive considerable discussion is the value of the Placement Brochure in "placing" graduating students in jobs. Your comments on this matter are welcome and, in fact, encouraged.

PROFESSOR LEE PUBLISHES NEW BOOK

The author, who has been "pulling down law books" for fifty years, has written a biography about the marauding adventures of a picturesque colonial pirate.

The volume is entitled: *"Blackbeard the Pirate: A Reappraisal of His Life and times."*

Blackbeard, who has become known throughout the world, made an impact on the history of the coastal waters of the Carolinas. For more than 250 years he has been the best-known person to live in North Carolina.

Geography and circumstances of the times destined North Carolina to be associated with the desperate activities of the sea rovers during the early 1700's.

It was an era when history was exploding with spectacular suddenness. All of Europe seemed to be awakening from a long sleep to see with nearly-opened eyes a changing world. It was an age of dreamers and daredevils—a time when bold and cougageous men sallied forth in sailing ships to take full possession of the new world.

Blackbeard lived among men whose courage and curiosity changed the world. Men who were savages on land became doubly so at sea. There was no halo that floated above the head of Blackbeard.

Blackbeard was the irrepressible *bon vivant.* He was, above all, the most daring, reckless, and courageous symbol of his times. Everything about his seemed larger than life—his achievements, rollicking mischiefs, and drinking. When he burst upon a scene, everything orbited around him. Blackbeard exacerbated conditions; he did not create them. Even in death, at Ocracoke, he was flamboyant.

The volume has been written much in the manner and style of a law book. It has been thoroughly documented. Statements in the text are supported by 600 numbered notes which have been placed in the back of the book.

There are other reasons why this book will appeal to lawyers. Four of the sixteen chapters deal with legal trials. A fifth chapter deals with a jurisdictional dispute between Virginia and North Carolina relative to captured pirates from Blackbeard's ship and ownership rights to some of Blackbeard's captured loot. One of the four appendices, orginally intended as a chapter, summarizes the jurisdiction of colonial courts of Vice-Admiralty.

The book is published by a member of the North Carolina Bar, a graduate of the Harvard Law School who practiced in Winston-Salem prior to becoming a publisher. He is John F. Blair, Publisher, 1406 Plaza Drive, Winston-Salem, N.C. 27103.

Autographed copies of the book may be obtained from Professor Lee for his former students and friends. The price of *Blackbeard The Pirate,* including slaes tax, is $9.36.

INTERNATIONAL LAW SOCIETY

The Society is still in the organizational stages of development and we are conducting a national cross-section study to determine the most productive management procedures and service programs in hopes of speeding our progress.

Within its first year, the Society has hosted the 1974 Jessup Cup competition (last spring), applied for its national charter with the Association of Student International Law Societies, and sponsored additional programs. The Society's last program, a showing of the Army films concerning the events of the Nuremberg Trial era, received great response. The next project will be a trip to Washington, D.C., for an International Weekend (February 27 - March 2, 1975) sponsored by the Georgetown Law Center's James Brown Scott Society of International Law. Included within the plans are visits to various international legal offices, such as the World Bank and the AFL-CIO, and talks with persons actually involved in the practice of international law.

One of the Society's most important functions lies in its representation of Wake Forest University School of Law in the annual Jessup Cup International Moot Court competition and for the third consecutive year, a team is being entered. The University of South Carolina is the host school this year (March 6-9), and the problem involves downstream pollution, set in the context of developing nations and their right to exploit their natural resources.

SBA SYMPOSIUM

David R. Tanis

In another of a successful series of law symposia, the Student Bar Association sponsored a symposium on the Sentencing of Adult Criminal Offenders. On Oct. 23, 1974 following what seems to be a popular format, the symposium was conducted in two sessions sandwiched around a buffet style dinner.

In the afternoon session, Norma Greenlee of the State Department of Corrections discussed the role of the correctional case analyst in which crime related problems are diagnosed and evaluated and a recommendation is made to the judge regarding the course of the conviction.

Former state legislator Dempsey McDaniel, now a member of the State Parole Board, followed with a discussion of the duties of the parole officer and the role of the parole system in sentencing. He felt that parole is properly considered as part of the sentence. Release of a prisoner on parole is not a right, said McDaniel, but depends on the probability that the inmate has reformed and an estimate of his ability to conduct himself as a law-abiding citizen. The parole board takes into consideration such factors as the nature and circumstances of the conviction, the crime and the previous record of the criminal, as well as his attitude in prison, his background and psychological profile. To some extent the community's reaction to having a felon back in society is also considered.

Following McDaniel, Victor Watts, a counselor on alcoholism and probation officer spoke concerning the suspended sentence and probation period which usually accompanies it. The probation officer investigates cases upon an order of an officer of the court. In making the confidential report the probation officer considers the probationer's employment and mental and physical state of being among other things.

Following the buffet dinner, the evening session convened attracting a substantially larger audience. than the afternoon session. W. Douglas Albright, a former Greensboro prosecuting attorney and now a superior court judge, set the stage with a presentation about the role of the prosecutor in the sentencing process. Although secondary, Albright sees this role as important nevertheless, for the prosecutor must insure that justice is done rather than just seek a conviction. The prosecutor, according to Albright, has a great deal of discretion in prosecuting the case and plea bargaining. Otherwise, overzealous prosecution can materially affect the sentence. This discretion should not, however, be used to sway the judge in favor of an inordinately severe sentence.

Judge Albright was followed by a notable Charlotte criminal lawyer and a Wake Forest alumnus, Allen Bailey. He spoke on the positive effect a defense attorney can have regarding the severity of the defendant's sentence. In addition, the defense can often obtain post-conviction relief for his client through programs such as release on bail pending appeal and habeas corpus proceedings.

By assessing the strengths and weaknesses of the case, the defence attorney can place his client in the best possible position through plea bargaining. Furthermore, by considering the practical realities of the situation by bringing the case before a certain judge known for leniency or by a guilty plea a sentence more favorable to the criminal can be obtained.

Judge James Exum, now of the North Carolina Supreme Court, concluded the symposium, speaking of the agony and the essence of sentencing. There are few guidelines on sentencing, said Judge Exum, and it is difficult to remain objective in the imposition of sentences. This, he feels, is important and he has recently advocated the imposition of uniform sentences to be pre-determined for each criminal category. Since the judge has the final say as to the sentence, Judge Exum feels he needs all the help he could get, stating that he would listen to any statements made by counsel in this regard.

The panel, upon Judge Exum's conclusion, fielded several questions from the audience before retiring.

WOMEN IN THE LAW

In this issue, the *Jurist* composed interviews with distinguished women who have done outstanding work in the field of law on local, state, and national levels. The interviews were constructed to discover what motivated them to become lawyers, and how they felt about the allegations of sex discrimination within as well as without the legal profession. A diversity of opinions turned up in the answers, as will be seen from the following:

SUSIE MARSHALL SHARP

Susie Marshall Sharp received her LI.B. from the University of North Carolina. She has received honorary degrees from U.N.C., Women's College (U.N.C.), Queens College, Elon College, Wake Forest College, Catawba College, and Pfeiffer College. She was admitted to the bar of North Carolina in 1928 and practiced in the firm of Sharp & Sharp in Reidsville, N.C., from 1929 to 1949. She served as City Attorney for Reidsville from 1939 to 1949. From 1949 to 1962, she was a special judge of the Superior Court of North Carolina. She served in the capacity of associate justice of the Supreme Court from 1962 to 1975. This year she assumed the position of the Chief Justice of the Supreme Court of North Carolina, the first woman to hold the position of chief justice in any state supreme court. She is also a member of the American Law Institute.

Why did you choose to become an attorney?

My father was an attorney, and "little pitchers have big ears." I was interested in his work and the outcome of his cases. Courtroom stories fascinated me. So — I decided to be a lawyer. However, it was not until I entered Law School that I began to understand that a lawyer's life was more drudgery than drama. Nevertheless, I prefer legal drudgery to all other kinds.

Where did you take your bar exam? Did the men and the women sit separately?

I took the bar examination in Raleigh, N.C. At that time it was given by the Supreme Court in the Supreme Court Building (now the Ruffin Building). Men and women did not sit separately. *[Editor's note: In the course of background research for this article, it was discovered that, as recently as 1971, in New York, women were seated separate and apart from the men taking the exam. The rationale given for this was that the presence of women would so excite the men taking the exam that they would be distracted from writing their answers. Hence, the question about seating arrangements.]*

What kind of jobs have you held since your graduation from law school? Which did you find the most enjoyable? Why?

For a short time after I graduated from the Law School I worked as secretary and research assistant to the Dean. Thereafter I was in the general practice of law with my father until I became a special judge of the superior court on 1 July 1949. I held that position until 14 March 1962 when I became an associate justice of the Supreme Court of North Carolina. Since January 2, 1975, I have been Chief Justice. I have enjoyed every job. However, in my view, a superior court judge in North Carolina has the most interesting job to be had anywhere.

If a trial lawyer, have you ever encountered any discriminatory or offensive treatment by judges in the courts?

As a trial judge I have never encountered any discriminatory treatment by judges in the courts.

However, like every other lawyer, I have appeared before a few judges who were not judicial gentlemen, and they were not discriminatory in their offensiveness.

Do you feel the doctrine of equal pay for equal work has applied to you?

It has always applied to me as a member of the judiciary, where the salary is fixed by law. As a practicing lawyer in the early thirties I sometimes felt that some clients thought I should not charge them as much as a "man lawyer," but I disabused them of that notion.

Also, I do not feel that clients were more inhibited when discussing their problems with me than they would have been had they been talking to a male attorney. Quite the contrary! I always felt that they were willing to take more of my time.

Has your local bar association included any women as presidents, secretaries, treasurers or chairmen in its history? What percentage of the present total in your local bar association are women?

My local bar association (Rockingham County) has had only one woman member — to-wit, me, and I was promptly elected secretary. I held that job for many years, and I got rid of it only by saying, "If re-elected, I will not serve."

Do you feel that being distinguished as a "woman attorney" is objectionable?

No, I did not object to being distinguished as a "woman attorney." I thought it was obvious from the beginning.

What is your position, pro or con, on the Equal Rights Amendment?

Since the Equal Rights Ammendment is presently pending before the North Carolina Legislature as a contested political issue, I deem it inappropriate to publicly express my views. I am sorry about that!

Do you have any advice you would direct to women law students or women lawyers in particular?

It will be well to bear in mind that the woman who undertakes to be a successful lawyer, wife, mother, civic leader, and femme fatale, may find that she has "exceeded the capabilities of her latitude." Other than that I would give the same advice to both men and women law students.

ELRETA MELTON ALEXANDER

Elreta Melton Alexander is the daughter of the late Rev. and Mrs. J. C. Melton, a Baptist Minister and teacher, respectively. Born in Smithfield, North Carolina, she graduated from Greensboro's James B. Dudley High School at age 15 and A&T State University at age 18. Before finding her calling in law, she taught mathematics, music and history on the high school level. Elreta Alexander went on to become the first Negro woman graduate of Columbia University Law School, the first Negro woman to practice law in the courts of North Carolina, and the first Negro woman in the United States to be elected to a district court post.

Prior to her election as district court judge in 1968, Elreta Alexander was a senior partner in the legal firm of Alston, Alexander, Pell and Pell. For 21 years she was actively engaged in the general practice of law in Greensboro, North Carolina, appearing as a trial attorney in thousands of civil and criminal cases and numerous administrative proceedings. In 1972 she was re-elected a district court judge for a four year term, leading the ticket with more than 50,000 votes in Guilford County. Judge Alexander has been widely acclaimed for her rehabilitative, innovative, and meaningful judicial programs for youths and other offenders.

Why were you interested in law as a vehicle to serve human justice?

The suggestion of the minister-candidate for the city council, whose campaign had disenchanted me with the operation of politics as a viable means of insuring democracy, was to the effect that if we could train and activate Negroes as lawyers, particularly in the south, this would lead to a gradual solution. He brought me a copy of *Blackstone's Commentaries on the Law,* which, as an assistant librarian in the now A & T State University, afforded the opportunity to explore and to nourish the seed of possibility. I then chose law instead of the ministry.

Where did you take your bar exam?

I am licensed to practice law in New York State and the State of North Carolina.

As a woman, did you encounter any discrimination because of your sex and race?

Yes, the "Isn't she cute?" treatment, courteous, condescending, as if she will go away given enough length and breadth. This "benevolence" lasted about a year. While I was being accommodated because "women were like a dog walking on hind legs, they don't do it very well, but you are surprised that they do it at all," I, being aware of their ingrained prejudices against women and a particular woman, used it to my advantage. I prepared and won case after case, always turning the other cheek to their jokes, and, like a boxing match, came out the winner. It made me stronger and the males more confused. Since they could not cause my retreat, they joined in accepting and treating me as a lawyer and not a particular lawyer. As I look back on it, the pressure was catalytic, sharpening my dull wits to over-achieving.

In what public non-professional capacities have you served?

I was a conferee to the Eisenhower and Kennedy Equal Employment Commission and in 1969 a member of the Attorney General Robert Morgan's Ad Hoc Committee on Revision of Criminal Law of North Carolina. I am a frequent lecturer to civic, religious, educational, business, professional, governmental, fraternal, youth, senior citizens organizations, groups and conventions.

Why did you become a candidate in the Republican primary for Chief Justice of the North Carolina Supreme Court?

Last spring, at age 55, I became a candidate in the Republican primary for chief justice, running against James M. Newcomb, a fire-equipment salesman without prior legal training or experience. That I lost to a man without any legal background reinforces my conviction that reform is needed in regard to judicial qualifications. If we are going to have a country of, for, and by the people as the founders intended, the voters must be given not only a choice, but a choice of qualified persons. If qualified citizens are hesitant to offer their services, then to that degree representative government is denied.

I feel that I was successful in my purpose. I was not running to win. I was running to cause us to re-examine the two-party system, to point out the need for some type of reform about qualifications and to emphasize that in a democracy a candidate should not feel intimidated. I have high praise for Chief Justice Susie Sharp, who would have been my opponent if I had survived the primary, and voted for her in the general election.

What do you think concerning equality of the sexes?

Men and women are equal except for the purpose of procreation. All of us are standing on the edge of a precipice. The survival of this green planet and the species we call human depends on how we find ways of using human energy. This obligation falls to both sexes.

Would you suggest a law career to women?

Nature brings people into life with an invisible assignment which society should provide the climate

to become visible. All things work together for the good. Nature abhors a vacuum. For every need and space, there is a person to fill that place or position. All persons should be trained to be knowledgeable about the fundamental rules of law at least to the extent that they know, *a priori,* when to consult a lawyer. While the evolutionary conditioning of women has generally developed their intuitive, non-linear powers, and some have used both hemispheres of their brains to overcome the societal stigmas on trangressions of the human (not creative) norm, every woman is not equipped to be a lawyer as every man is not so equipped. The decision depends upon an evaluation, after investigation, of the factors involved in the decision, remembering that law is the vastest field, covering all occupations and endeavors, requiring intuitive as well as pragmatic brain utilization. Like every other occupation or endeavor, the field of law as a vocation should attract women or men only if they possess the particular native inclinations and talents to love people, keep serene and cool under pressure, academic intelligence, infinite patience, and the ability to process information diffusely. It is my belief that women, because of the centuries of requirement to develop their intuitive factors, the right side of their two-hemisphere brain, are at this time generally excellently equipped to be lawyers, particularly where human values are concerned.

For too long many women have been retarded in their growth and advancement by diverting their energy to the glorification of men. I would suggest a law career to women if they have the understanding of the nature of humanity, the fortitude to endure the censure, the ego of appreciation of the nature of humanity, and the ability to endure and overcome the man-made sex inferiority and perform to the maximum of the human potential.

SYLVIA ROBERTS

Sylvia Roberts received her A.B. degree in political science at U.C.L.A. and her LI.B. from Tulane College of Law, New Orleans, Louisiana. She did advanced studies at the Institute of Comparative Law, University of Paris, on a scholarship granted by the Republic of France. She served as law clerk to Chief Justice John B. Fournet of the Supreme Court of Louisiana. Since 1958, she has been in private practice in New Orleans and Baton Rouge, with extensive trial and appellate work in civil and criminal matters in state and federal courts. She is best known for her appearance as counsel for the plaintiff in *Weeks v. Southern Bell Telephone and Telegraph Co.,* the first case involving sex discrimination under Title VII of the Civil Rights Act of 1964. She has also served as Chairone of the Committee on Rights for Women of the ABA.

Why did you choose to become an attorney?

I wanted to work, and knew as early as 9th or 10th grade that I wanted an independent life. I didn't want to be under anyone's thumb, so I knew it would have to be a profession. My job skills were really only in the areas that would qualify me for teaching or for law, and teaching is too heirarchial. I didn't know what laywers really did, and I wasn't particularly inspired by anyone. I just gambled on whether I had the skills in fact, and knew I would find out after I graduated.

What kind of jobs have you held since graduation from law school? Which did you enjoy the most? Why?

When I graduated, in 1956, women only worked as law clerks *[around the New Orleans area]*. These jobs were usually permanent, and were considered to be perfect "women's jobs," as there were regular hours, decent summer vacation time, and so forth.

I was offered a job in a large law firm. My duties would have been to do stock transfers and keep the law library in order. I was offered another job, with no chance of advancement, doing only court runs for $80 a month, which wasn't enough to live on even then. There was an oil company that had one department staffed entirely by women, but it was full. They didn't want to take women in the other departments, because they didn't want to destroy client confidence by letting them know that women worked there.

I worked with a small branch firm in New Orleans, and only wrote briefs. I didn't appear in court or in trials. On the side, I developed my own criminal practice, as this firm didn't handle criminal work. I was never trained the way most attorneys are-by watching a mentor at work. I just did the best I could, with my limited experience and contacts.

Has your local bar association included any women as presidents, secretaries, treasurers, or chairmen in its history? If so, how many? What percentage of the present total in your local bar association are women?

Probably there have never been any women officers in my local bar association; there certainly haven't been any recently. In my area, and my era, most women attorneys felt fortunate merely to be employed. It would be ungrateful of them to want a better job, so they identified with the men, and said that there was no discrimination against them. They were coping by denial. I'm not recriminating them, because it was a very difficult situation. I don't like to dump on other women - that wastes too much energy.

Maybe 5% of my local bar is composed of women. The local feeling seems to be that it is better for women to do title work, family law, and juvenile work. This is what society has channelled women attorneys into. Anything that is connected with paper or social work is good for women.

Have you ever encountered any discrimination against women in the legal profession by legal employers? Specifically, do you have any comments concerning your job interviews?

I eventually set up my own practice, so I didn't do a whole lot of job interviewing. I do remember that when I talked to the EEOC, they asked me if I were getting married. By the time they turned me down, though, I was already working in a small firm.

If a trial lawyer, have you ever encountered any discriminatory or offensive treatment by judges in the courts?

Most certainly! I remember one judge saying to me, "I don't understand this whole law of sex discrimination. I have three daughters and I love them." Sometimes they have this involuntary attitude of "What are *you* doing in our court?" They don't necessarily have an axe to grind. This is just the same attitude that they have towards "Yankee" lawyers in their courts.

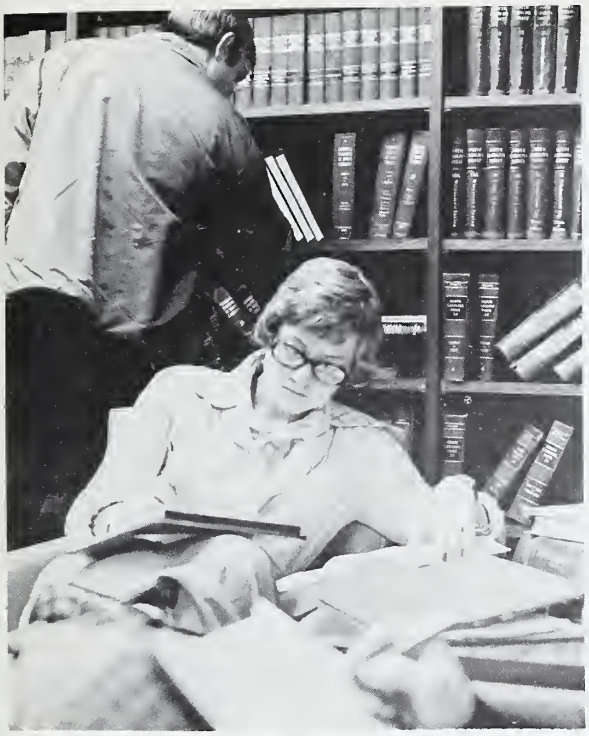
Also, a woman who argues a sex discrimination case is automatically assumed to have a personal involvement, rather than a professional interest in getting a routine settlement. The whole thing is silly - why should you have to lose your job and go to court to get the money that you were rightfully entitled to in the first place?

A few years ago, I was doing an *amicus* argument and the judge said, "We have just passed a state equal rights law. That is a tragedy! This will hurt women." And this was only two years ago! This is an example of stereotype thinking, and the only response most men over 50 know - they've only known their mothers and wives and some spinster career women. It's all new to them that women can be competent in a "male" profession. They don't know or associate with women who can give them different feedback.

People have an obligation to educate themselves as to the status of women. This will be a mammoth education job. We must be willing to tolerate their intolerance while they are learning.

Do you feel the doctrine of equal pay for equal work has applied to you?

Oh no! It didn't apply when I began working and it doesn't always apply now. In 1963, it was a completely foreign doctrine but now everyone is for it. Twelve years has made a big difference. There is sometimes still hypocrisy, but at least now they *talk* about equal pay for equal work.



RHODA BRYAN BILLINGS

Rhoda Bryan Billings received her B.A. degree from Berea College and her J.D. from Wake Forest University. She was involved in the general practice of law from 1966 to 1968. In 1968, she was elected judge of the district court, 21st Judicial District of North Carolina, and served in that capacity until 1972. She has been an Assistant Professor of Law at Wake Forest University (1973-74) and is currently serving as an Associate Professor of Law at Wake Forest. In addition, Mrs. Billings has been active in the work of the North Carolina Criminal Code Commission, revising and updating criminal procedures and statutes.

Why did you choose to become an attorney?

A life-time interest in law, generated in part by the fact that my father was a lawyer, became the basis of my career goals when, after I had graduated from college, my future husband and I began discussing long-range plans and goals. Law appeared to provide the most complete union of my interests and abilities in a socially worthwhile and personally satisfying career. Because my husband also chose a career in law, we have had the satisfaction of sharing not only mutual personal interests but career interests as well.

Have you ever encountered any discrimination against women in the legal profession by legal employers?

No. I have never sought a job with a law firm, although I have received unsolicited job offers. In addition, I have never encountered any discriminatory or offensive treatment by judges in the courts based on the fact that I was female. I feel that the doctrine of equal pay for equal work has applied to me. I don't think that clients are more inhibited or less responsive in discussing their problems with me than they would be if they were talking to a male attorney.

Has your local bar association included any women as presidents, secretaries, treasurers, or chairmen in its history? If so, how many? What percentage of the present total in your local bar association are women?

I have served as secretary of the local bar association. Other women have also served in this capacity. I do not have any specific information regarding all positions held by women in the local bar association or the percentage in the association, although there are perhaps around ten women lawyers presently in the area.

Do you feel being distinguished as a "woman attorney" is objectionable?

No. I find no accurate description objectionable.

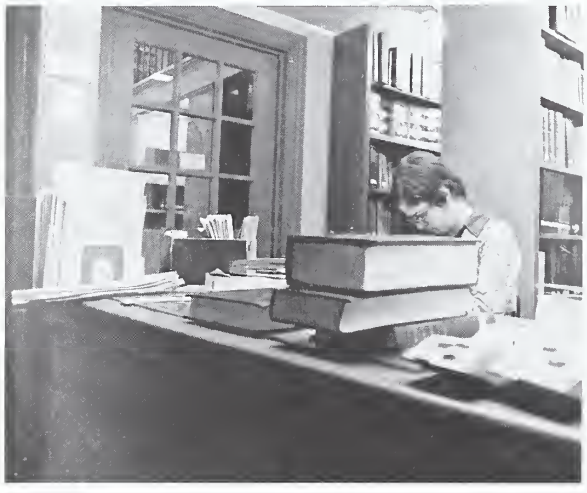
What is your position, pro or con, on the Equal Rights Amendment? Why?

I am opposed to the Equal Rights Amendment. One, because it affects only "state action," it does

not reach the areas of greatest concern of women - equal job opportunities, equal pay, equal access to credit. In these areas, legislation (which would not be mandated by the ERA) already exists which provides the legal protection women seek. Two, because the ERA does not permit any exceptions, even when there might be some desirable basis for a distinction between the responsibilities of men and women. I believe that in some areas of family responsibility women should be able to rely upon the law's protection of their right to the role of homemaker. Three, because the ERA would provide for the right of federal control in areas now reserved to the states. Any increase in federal, as opposed to local, governmental control in my view lessens the responsiveness of the government to the local people and diminishes the voice of the people in the determination of those things which directly affect them. Four, because the constitutional "right of privacy" recognized by the Supreme Court and used by ERA supporters to discount fears that the ERA would require co-ed facilities, does not give one individual a "right of privacy" from another individual in a public or semi-public place (such as rest rooms). It gives to the people a right of privacy against *governmental* intrusion - *i.e.*, searches and seizures, prohibition against the use of contraceptives, and interference in family relationships.

Do you have any advice that you would direct to women law students or women lawyers in praticular?

My only advice would be that women in law, as in any other endeavor, approach their work and the world fairly. It is not fair to expect discrimination from those you meet. That is prejudice on your part. If you approach others from a prejudicial viewpoint, you are more likely to get the reaction you expect.



JILL WINE VOLNER

Assistant Special Prosecutor Jill Wine Volner made the headlines with her superlative cross-examination of former President Nixon's personal secretary, Rose Mary Woods, during the Watergate hearings. Born in 1943, she attended the local schools in Chicago, Illinois. She graduated from the University of Illinois-Champaign in 1964 with a B.A. in journalism. The summer prior to entering law school, she was a social worker. After her first year at Columbia University Law School, she married a fellow law student and dropped out to earn tuition money to complete her legal education. During her one year sabbatical from law school, Mrs. Volner pursued her interest in writing. Returning to her legal studies, she worked summers in the field of legal aid and graduated from Columbia University Law School in 1968.

Why did you choose to become an attorney?

I started out wanting to be a political reporter and felt law school would be a good background for this. During my second year of law school, I became very interested in and excited about trial law during the moot court competition. That experience really influenced me to pursue a legal career.

Where did you take your bar exam? Did the men and women sit separately?

I took the bar exam in New York State in 1968, and the men and women were required to sit separately while taking the exam.

What kinds of jobs have you held since your graduation from law school? Which did you find the most enjoyable? Why?

Initially, I was a criminal prosecutor in the Organized Crime section of the United States Department of Justice and then worked in the Labor Racketeering section of the Justice Department. Presently, I am a trial attorney in the Special Prosecutor's Office. They were all enjoyable jobs, but the most exciting and memorable, of course, was my experience as Deputy of the Watergate Task Force.

Have you ever encountered any discrimination against women in the legal profession by legal employers?

Yes, I was the first woman hired as a Prosecutor in the Criminal Division of the Department of Justice, and it took me a year to get my first trial. This was before the Women's Liberation Movement was strong, and I was not expecting any discriminatory treatment. After a while, I realized my division was reluctant to send a woman into trial court.

If a trial lawyer, have you ever encountered any discriminatory or offensive treatment by judges in the courts?

No, not by judges, but I have encountered such treatment from some male trial lawyers. I found their sexist tactics of referring to me in the courtroom as "the young lady" and trying to demean me in the eyes of the jury largely unsuccessful. Another sexist tactic was for opposing counsel to deliberately emphasize his male strength by shouting and yelling in the courtroom, thereby contrasting with my softer, less forceful approach.

Do you feel that the doctrine of equal pay for equal work has applied to you?

Yes, I do.

Do you feel being distinguished as a "woman attorney" is objectionable? If so, why?

Yes, I won't permit anyone to call me a "woman lawyer" because I think it is unnecessary. I prefer to be called a trial lawyer.

Do you feel that clients are more inhibited or less responsive when discussing their problems with you than they would be if they were talking with a male attorney?

Let's change clients to witnesses. I feel that witnesses react differently to me, not necessarily worse or better because I'm a woman but because of my personality. As a woman, I do start with a disadvantage; I have to be over-prepared.

Do you have any advice that you would direct to women law students or women lawyers in particular?

Law is an intellectually and socially worthwhile career. I would advise women pursuing the law as a career not to think of themselves as stereotypes but as lawyers.

LEGAL ARTICLES

"PROPERTY" OR "LIBERTY" INTERESTS IN PUBLIC EMPLOYMENT

I. INTRODUCTION

Two recent cases on public employment, one arising from federal employment and the other from state government employment, point out the current thinking of the federal courts (the Supreme Court and the Fourth Circuit) on the extent of "property" or "liberty" interests which governmental employees have in their employment.

The Supreme Court case to be discussed is *Arnett v. Kennedy,* 416 U.S. 134 (1974). This case, decided by the Court on April 16, 1974, involved Kennedy, an employee of the Chicago regional office of the Office of Economic Opportunity, who was dismissed for. allegedly making certain reckless, false, and defamatory statements concerning his supervisor.

The Fourth Circuit case is *Nunnery v. Barber,* 503 F.2d 1349 (4th Cir. 1974). This case, decided September 18, 1974, involved Nunnery, a former manager of a West Virginia state-operated liquor store, who was dismissed for alleged patronage reasons.

In both of these cases, dismissed employees argue that their dismissal was violative of certain "liberty" or "property" rights that they have in their employment status. These cases were selected not only for their federal-state diversity, but also for comparison of the rule between civil service as opposed to patronage public service employment.

II. GROWTH OF JOB SECURITY FOR PUBLIC EMPLOYEES

Interest in civil service in the United States only began in the second half of the nineteenth century. From the beginning of the Republic until about 1883, a system of political patronage provided the only method of filling governmental jobs. The assassination of President James A. Garfield in 1881 by a dissappointed job seeker sparked interest and action in a system of civil service which culminated in the passage of the Pendleton Act in 1883. 5 U.S.C. sec. 5596 (1970). The Pendleton Act generally governed such matters as entry into governmental service, competitive examinations and the like. The Act did not, however, offer much protection for an employee separated from government service. It was not until the administration of President William McKinley in 1897 that that Civil Service Rule 8 was adopted. This rule provided that an employee should not be dismissed but for a just cause and upon written charges of which "the accused should have full notice and an opportunity to make a defense." An enlargement of the principles of Rule 8 were made a part of the Lloyd-LaFollette Act passed in 1912. 5 U.S.C. sec. 7501 *et. seq.* (1970). and hearing provisions of this act are supplemented by appropriate regulations of the United States Civil Service Commission. 5 C.F.R. sec. 752.202 (1972).

III. EXTENT OF HEARING REQUIRED BEFORE "TAKING"

In *Arnett,* appellee's argument centered upon lack of a full, scale, trial-type hearing before dismissal. Following 5 *C.F.R.* sec. 752.202 (a) Kennedy was given "Notice of Proposed Adverse Action" which was followed some time later with notice of his removal and right to appeal to OEO or the U.S. Civil Service Commission. Kennedy then instituted suit in the United States District Court. The three-judge District Court hearing the case ordered Kennedy's reinstatement, holding in part that the regulations followed denied Kennedy his due process rights because the regulations and the statute failed to provide for a trial-type hearing. 349 F. Supp. 863 (N.D.Ill. 1972). The Supreme Court reversed, finding that while Congress through the Lloyd-LaFollette Act granted to federal employees the protection of not being discharged without cause ". . . and prescribing the procedural means by which that right was to be protected, Congress did not create an expectancy of job retention in those employees requiring procedural protection under the Due Process Clause beyond . . ." that afforded by the statute and regulations. 416 U.S. 134 at 163-64. In short, the Court is saying that employees have certain protection, but that protection is what Congress has decided to grant. This follows the rules laid down by two other recent Supreme Court cases deciding the

job retention rights of public employees, *Board of Regents v. Roth,* 408 U.S. 564 (1972) and *Perry v. Sindermann,* 408 U.S. 593 (1973). In *Roth,* a nontenured college teacher serving under a one year contract was found not to have a property interest in the job, since his contract by its term was not renewable. In *Sinderman,* another nontenured college teacher had served for several years under a *de facto* tenure system where there was an "understanding" with his employer. The Court held that if it could be shown that a property interest from this "understanding" arose, then Sindermann would be entitled to a hearing.

IV. PROPERTY RIGHTS AND THE PATRONAGE SYSTEM

In *Nunnery v. Barber,* appellant was not under the protection of a civil service system. The Legislature had provided that the position that Nunnery held could not be placed under civil service by the Executive. W.Va.Code sec. 29-6-2 (Michie repl. vol. 1971) and further that the position was one held at the will and pleasure of the Alcohol Beverage Control Commissioner. W.Va. Code sec. 60-2-12 (1966).

The District Court considering her claim found that mere dismissal of a patronage employee absent some violation of a constitutionally protected right would not be altered by the court. A change in the system of employment should more properly come from the executive and the legislature. Nunnery v. *Barber,* 365 F. Supp. 691, 695 (1973).

The Court of Appeals agreed, finding that appellant by her own choice had become an employee in what she knew was a patronage position. The Court of Appeals found that appellant could not meet the *Sindermann* test as she could not show her dismissal to be one used to deprive her of a constitutionally protected right.

V. CONCLUSION

Government may grant to employees the right not to be discharged from their employment except for cause. Except for some violation by the government of some constitutionally protected right of that employee (such as his right to free speech or religion) the remedy given in the protective legislation is exclusive.

An examination of the state government employment case reveals that a government body may chose to retain certain of its employees as patronage employees who serve at the "will and pleasure" of the Executive. Except for some violation of a constitutionally protected right of the employee, he retains no property interest in the status of employment which requires a due process hearing.

When a government body elects to employ others under a system of protected service under which there are rules for recruitment, selection, promotion, and seperation, while the employee is not granted a property interest in the employment status due to this granting of protection, the government agency is bound by the statute and its own regulations to see that each employee is accorded the protection to which he is entitled. The role of the courts is to see that these protections are safeguarded, and that even absent a civil service system dismissal is not used to promote some unconstitutional purpose.

Michael R. Cline

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THE FINDINGS OF PROBABLE CAUSE UNDER THE CRIMINAL PROCEDURE ACT

At first glance it appears that the new Criminal Procedure Act has made some significant strides in providing for the fair determination of probable cause in criminal cases. The new Criminal Procedure Act, N.C. Gen. Stat. ch. 15A, will become effective July 1, 1975. Article 30 deals with the probable cause hearing, the direct descendant of the preliminary hearing. Under N.C. Gen. Stat. sec. 15A-611 counsel for both the state and the defendant may be present at the probable cause hearing and provision has been made for examination and cross-examination of witnesses. A significant feature of this statute is the requirement that the state must prove by nonhearsay evidence that there is probable cause to believe that the offense charged was committed by the defendant. This rule is subject to three exceptions: (1) traditional exceptions to the hearsay rule; (2) reports by certain technical experts; and (3) certain types of hearsay when there is no serious contest. This prohibition against hearsay testimony has been incorporated into N.C. Gen. Stat. sec. 15A-611 primarily to compel the state to present its key witness and thereby provide for a fair evaluation of probable cause. The Official Commentary to the statute indicates that the defendant will no longer be entitled to the benefit of a probable cause hearing if an indictment is returned against him.

Initially there would seem to be little concern over whether the determination of probable cause is made by the grand jury or at the probable cause hearing N.C. Gen. Stat. sec. 15A-624 (a) provides that "the grand jury is the exclusive judge of facts with respect to any matter before it." N.C. Gen. Stat. sec. 15A-623 (d) provides that only the junors, the witnesses, an interpreter, and a lawenforcement officer holding the witness in custody may be present during the entire grand jury proceeding. N.C. Gen. Stat. sec. 15A-623(b) provides that the forman rather than the prosecutor will preside over all hearings. Thus, it appears that Article 31 of the Criminal Procedure Act guarantees a true "people's panel" with no threat of domination by the prosecutor.

A closer examination of the provisions of the Criminal Procedure Act concerning the rules governing the probable cause hearing and the grand jury proceedings reveal that a defendant may be at a severe disadvantage in having his case heard before the grand jury rather than at the probable cause hearing. Article 31 makes no mention of the nature of the evidence which may be presented before the grand jury. Pre-act case law will govern this matter. *United States v. Costello,* 350 U.S. 359 (1956), and more recently *United States v. Calandra,* 414 U.S. 338 (1974), sanctioned the use of hearsay before the grand jury. North Carolina has approved this rule in a number of cases. *State v. Levy,* 200 N.C. 586, 158 S.E. 94 (1931); *State v. Squires,* 265 N.C. 388, 144 S.E.2d 49 (1965). Thus, while hearsay may not be presented at the probable cause hearing under the Criminal Procedure Act, it appears that it may be presented to the grand jury.

N.C. Gen. Stat. sec. 15A-626 provides that only witnesses which the solicitor designates may be examined before the grand jury. In reality, the grand jury will have little independence in conducting investigations and will be generally dependent on the prosecutor for it's sources of information. If so disposed the prosecutor may list only witness, with a secondary knowledge of the case. Such a situation would differ little from the current practice where single state witnesses deliver hearsay testimony to the grand jury in obtaining indictments. *State v. Wall,* 273 N.C. 130, 159 S.E.2d 317 (1968); *State v. Turner,* 268 N.C. 225, 150 S.E.2d 406 (1966). The solicitor would not need to present his key witnesses before the grand jury and it would appear that the testimony of a single detective, file in hand, would be more effective in obtaining an indictment than a whole parade of hesitant or forgetful witnesses.

The potential exists under the Criminal Procedure Act for a tremendous variation between the probable

cause hearing and the grand jury hearings with respect to the nature and amount of evidence necessary to find probable cause. From the defendant's point of view the benefits of the probable cause hearing will greatly outweigh those obtainable from a grand jury hearing. In addition to the preclusion of hearsay, the probable cause hearing will afford the defendant the opportunity to cross-examine a witness an opportunity which is unavailable at a grand jury hearing. Although it is not intended as such (see Official Commentary to Article 30), the probable cause hearing will provide the defendant with a vital source of discovery which is also unavailable under the grand jury system. Unfortunately, it is the current practice of a number of prosecutors to avoid the preliminary hearing through the procurement of an indictment. The Criminal Procedure Act provides no safeguard against such prosecutorial conduct. A continuation of the current prosecutorial practice would make the determination of probable cause essentially the same as it was before the passage of the Criminal Procedure Act and would eliminate any new benefits which the act provides in this area.

John Pirog

BREATHALYZER TEST MANDATORY – .10 AS AN ABSOLUTE

As of January 1, 1975, North Carolina has in effect drunk driving laws which are among the most stringent in the nation. These laws are the result of legislative amendments adopted by the North Carolina General Assembly in 1973 and 1974. As of June 1, 1973, it became mandatory that persons suspected of driving under the influence of alcohol submit to a Breathalyzer test.[1] This law provides that any motorist who refuses to take the Breathalyzer test upon request shall automatically lose his license for six months. The most recent enactment by the General Assembly further provides that should a motorist take the Breathalyzer test and have a blood alcohol content of 0.10, the motorist will be deemed to have been driving under the influence.[2] Representative George Miller, D-Durham, chairman of the House Highway Safety Committee described the General Assembly's action in toughening the drunk driving policy as "a major accomplishment needed to solve a very serious problem . . . It takes tough medicine to solve a tough problem and we think this new law will do the job." This writer will not presently take issue with whether or not these recent enactments are the proper dosage but instead will briefly comment on the constitutionality of the above measures.

North Carolina's mandatory requirement that motorists submit to a Breathalyzer test stems from the doctrine of implied consent. The origin of implied consent can be discovered in the "long arm" statutes which were developed in motor vehicle cases to provide for service of process on non-resident drivers who, by their act of operating a vehicle, had consented to the appointment of the Secretary of State as their agent when involved in an accident.[3] The validity of such "long arm" laws was long ago upheld by the United States Supreme Court.[4] All fifty states have implied consent statutes.[5] N.C. Gen. Stat. sec. 20-16.2(2) is typical of these implied consent statutes but does afford the motorist more protection than that given by the Uniform Vehicle Code and a majority of states, requiring the officer to warn the motorist of the consequences of refusing to take the Breathalyzer test.[6] The courts have

uniformly upheld the implied consent statutes against constitutional challenges.[7] In so holding, the courts have stated that if the provisions of these implied consent statutes are followed, there is no illegal search and seizure;[8] taking of the test does not violate the privilege against self-incrimination;[9] and there is no right to counsel attached to the taking of the Breathalyzer test since it is not a "critical stage" of the proceeding.[10]

N.C. Gen Stat. sec. 20-138(b) (Supp. 1974) took effect on January 1, 1975, and provides North Carolina with a standard which makes it unlawful to drive or be in actual physical control of a vehicle when the person has 0.10 percent or greater of blood alcohol content. Prior to this enactment, the State, when charging a person with driving while intoxicated, had to present evidence that the person's mental or physical faculties were appreciable

Coxe v. State, 281 A.2d 606, 607 (Del. 1971). A case challenging the constitutionality of the drunk driving statute,[11] the court noted:

> The statute provides for no presumption of guilt, but instead provides that any person having the specified blood alcohol concentration 'shall be guilty'. To establish guilt, the State must prove only that the defendant was in physical control of the vehicle, and that a proper and timely test showed the required percentage of alcohol concentrated in the defendant's system.

As to constitutionality the court said:

> We are unable to agree with appellant's contention that the new statute is unconstitutional. Its effect is to forbid any person to operate a motor vehicle if his blood contains .1 of one per cent alcohol. It represents a legislative determination that such quantity of alcohol has sufficient adverse effect upon any person to make his driving a definite hazard to himself and others. We cannot say that this determination is unfounded or contrary to the facts; a number of studies and many statistics have recently been published by experts in this field which support that conclusion.

impaired to support a Breathalyzer reading of 0.10 or more. This allowed arguments to the jury that experienced drinkers were not necessarily under the influence at 0.10 or above on the Breathalyzer scale.

The statute now in force imposes an absolute standard comparable to maximum speeding laws which make it unlawful to drive a vehicle over a certain speed. Although there are presently no North Carolina cases which have tested N.C. Gen. Stat. sec. 20-138(b), there is judicial support for a similiar absolute statute adopted by the state of Delaware. In

CHART OF APPROXIMATE BLOOD ALCOHOL PERCENTAGE

Drinks	Body Weight in Pounds								Influenced
	100	120	140	160	180	200	220	240	
1	.04	.03	.03	.02	.02	.02	.02	.02	Rarely
2	.08	.06	.05	.05	.04	.04	.03	.03	
3	.11	.09	.08	.07	.06	.06	.05	.05	Possibly
4	.15	.12	.11	.09	.08	.08	.07	.06	
5	.19	.16	.13	.12	.11	.09	.09	.08	
6	.23	.19	.16	.14	.13	.11	.10	.09	
7	.26	.22	.19	.16	.15	.13	.12	.11	Definitely
8	.30	.25	.21	.19	.17	.15	.14	.13	
9	.34	.28	.24	.21	.19	.17	.15	.14	
10	.38	.31	.27	.23	.21	.19	.17	.16	

One drink is 1 oz. of 100 proof liquor or 12 oz. of beer. Subtract .01 for each 40 minutes of drinking. EXAMPLE: A 160 pound person having consumed 4 drinks in less than 40 minutes will have an approximate blood alcohol percentage of .09

SUREST POLICY IS . . . DON'T DRIVE AFTER DRINKING!

KNOW YOUR LIMITS

The safest policy is not to drive after drinking. If, however, you do drink and then drive, then know and stay safely within your own personal, as well as the legal, limits. Under the Statutes of North Carolina, effective January 1, 1975, it is unlawful for any person to operate any vehicle within the State when the percent of alcohol in such person's blood is at the .10 level or above. Driving after drinking in excess of this level is not only exceedingly dangerous but severe penalties are imposed by law.

The table at the left indicates the relationship between the number of drinks taken by a normal adult and such legal limit. While the legal limit is specified at the .10 level, this is not necessarily the same as your own personal safe limit. Only you can determine that.

Remove the card and keep it in your wallet for ready reference, if applicable to you.

N. C. DEPARTMENT OF MOTOR VEHICLES

In conclusion, it appears that both N.C. Gen. Stat. sec. 20-16.2 and N.C. Gen. Stat. sec. 20-138 (b) are constitutional and therefore only subject to procedural attack.

Daniel D. Khoury

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2. N.C. Gen. Stat. § 20-138 (b) (Supp. 1974)
3. N.C. Gen. Stat.t. § 1-105 (Supp. 1974)
4. Hess v. Pawloski, 274 U.S. 352 (1927)
5. Donigan, *Chemical Tests and the Law,* Ch. XVI (1966)
6. Uniform Vehicle Code § 6-205.1 (1968)
7. Note: 88 ALR2d 1964, "Suspension or revocation of driver's license for refusal to take sobriety test" § 2
8. State v. Boome, 269 N.C. 661, 153 S.E.2d 384 (1967)
9. State v. Sykes, 285 N.C. 202, 203 S.E.2d 849 (1974)
10. United States v. Wade, 338 U.S. 218 (1947) But see:

    People v. Gursey, 22 N.Y.2d 224, 239 N.E.2d 351 (1968)
11. Delaware, Title 21, § 4176(a) (1970)

PROPOSED AMENDMENTS TO THE N.C. WORKMAN'S COMPENSATION ACT

A public bill was introduced in the North Carolina Legislature on Monday, January 27, 1975, that would have a profound effect on the pervasiveness of North Carolina's Workmen's Compensation Act. The bill was introduced by State Senator William Smith and was forwarded to the Manufacturing Committee. Three sections are affected, but the most proufound changes would be made to N.C. Gen. Stat. sec. 97-2(1).

At the present time the Workmen's Compensation Act defines employment as including "employment by the State and all political subdivisions there of, and all public and quasi-public corporations therein and all private employments *in which five or more employees* are regularly employed . . . " However, under Senator Smith's proposal the coverage of the Workmen's Compensation Act will be expanded so as to reduce the minimum number of workers, for a business to become eligible, from the present *five* to a new minimum of *one.* This is a dramatic change and will greatly increase the number of participating businesses, and have a profound effect on the small businessman.

Under the Act as it presently stands, certain exceptions or exemptions from the provisions of the Act are provided to particular types of business establishments. Exemptions are given to small sawmill operations that only operate for less than 60 days within a period of six months and employ fewer than ten employees. However, under the new proposal this exemption would be dropped from the Act. Another exemption has been provided for domestic workers, but under Senator Smith's bill this exemption would also be eliminated, thus bringing these employees under the provisions of the North Carolina Workmen's Compensation Act for the first time. Until now agricultural workers have been exempted from the provisions of the Act, but this too would be changed. If Senate Bill 49 should pass, the new exemption would be limited to farm workers who are employed by farm operators that have an annual payroll now exceeding $10,000. This last change is by far the most significant change of all, and would have widespread effects.

Senator Smith's bill will also affect another section. N.C. Gen. Stat. sec. 97-13(d) provides for the exemption of "persons, firms or corporations engaged

in selling argicultural products." This section would effectively be repealed if the proposed legislation becomes law. Still another subsection of N.C. Gen. Stat. sec. 97-13 would undergo modification, in this case subsection (b). At the present time this subsection provides that:

> . . . any employer without regard to number of employees, including an employer of domestic servants, farm laborers, or one who previously had exempted himself, who has purchased workmen's compensation insurance to cover his compensation liability shall be *conclusively presumed* during the life of the policy to have accepted the provisions of this Article . . . .

This conclusive presumption has been removed by the text of the bill, along with the language that gives an exemption to the Act to employers of casual employees, domestic servants, farm laborers, and those business concerns with fewer than five employees. The exemption given to the federal government is retained. The bill though not extensive in terms of number of sections affected does have far reaching effects, and will result in a significant broadening of the coverage of the Workmen's Compensation Act in North Carolina

Edward Ferguson

PRIVITY STILL A REQUIREMENT IN BREACH OF WARRANTY ACTIONS

Brendle v. General Tire & Rubber Co., 505 F.2d 243 (4th Cir. 1974).

A North Carolina widow sued an Ohio tire manufacturer to recover damages for her husband's death, which allegedly resulted from the blow-out of a defective tire on the truck which he was driving. Applying what it believed to be the North Carolina rule under the circumstances, the Fourth Circuit Court of Appeals affirmed the District Court ruling which denied relief to the widow on the ground that privity was a prerequisite to recovery for breach of warranty in this state. The Court rejected the claim of the widow that the substantial advertising by the defendant extended the implied warranty of the tires to the deceased driver, "for it was not the driver who relied on [the advertisements], but rather his employer . . . . *Brendle v. General Tire & Rubber Co.*, 505 F.2d 243, 245 (4th Cir. 1974).

The *Brendle* case has made numerous apperances in the federal courts, several actions arising from the truck accident having been brought originally under two theories of recovery: negligent design and manufacture of the tire and breach of the implied warranty of the tire's fitness for use. The tire manufacturer's motion for summary judgment in the negligence action was first granted. The Fourth Circuit affirmed in *Brendle v. General Tire & Rubber Co., 408 F.2d 116 (4th Cir. 1969).* In a later

appearance, the tire company's motion for summary judgment was granted when the theory of recovery was limited to breach of warranty. Having surveyed the North Carolina cases on the subject, the District Court concluded that *Wyatt v. North Carolina Equipment Co.*, 253 N.C. 355, 117 S.E.2d 21 (1960), was controlling. In short, absent a showing that privity existed between the decedent driver and the tire manufacturer, there could be no recovery for breach of warranty. *Brendle v. General Tire & Rubber Co.*, 304 F.Supp. 1262, 1266 (M.D.N.C. 1969).

The 1974 affirmation of that decision by the Fourth Circuit serves to point out the doubtful state of the law with respect to the privity requirement in breach of warranty actions. While this requirement has been abandoned in some jurisdictions, *see* Annot., 78 A.L.R.2d 460 (1961), North Carolina has permitted breach of warranty actions absent privity only where food, drink, or insecticides in sealed containers with labels or advertisements that could be construed as running to the consumer were involved. *Brendle v. General Tire & Rubber Co.*, 505 F.2d 243, 245 (4th Cir. 1974). The Supreme Court of North Carolina has not recently enunciated its position in a breach of warranty action not involving food, drink, or dangerous substances.

The most recent decision by the North Carolina Court of Appeals dealing with this area of the law reaffirmed the privity requirement in an action against an automobile manufacturer brought by a driver who was injured when the accelerator of the car she was operating stuck, causing an accident. Citing the *Wyatt* case, the Court concluded:

> It appears to be settled in this jurisdiction that, subject to some exceptions, it is the general rule that only a person in privity with the warrantor may recover on the warranty. *Williams v. General Motors Corp.*, 19 N.C.App. 337, 340, 198 S.E.2d 766, 768, *cert. denied,* 284 N.C. 258, 200 S.E.2d 659 (1973).

In conclusion, it seems unlikely that the Supreme Court of North Carolina, under a set of circumstances similar to *Brendle,* would suddenly dispense with the requirement of privity in a breach of warranty action.

Michael G. Walsh

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Wyatt v. North Carolina Equipment Co., 253 N.C. 355, 117 S.E.2d 21 (1960) (Employee injured by defective machinery unable to recover from seller on breach of warranty because of lack of privity.)

Byrd v. The Star Rubber Co., 11 N.C. App. 297, 181 S.E.2d 227 (1971) (Employee of a retailer of new tractor tires has no action for breach of warranty against the tire manufacturer since there is no privity of contract.)

6 N.C. Index 2d, Sales § 14.

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FREE SPEECH AND STATE ACTION

Arrington v. Taylor, No. C-220-D-72 (M.D. N.C. August 29, 1974), *appeal docketed,* No. 74-2080, 4th Cir. Sept. 27, 1974.

Six students at the University of North Carolina at Chapel Hill brought this action under 42 U.S.C. sec. 1983 against the school's Board of Governors and other state officials, claiming that appropriations of student fees for the support of the campus newspaper violated their constitutional rights. While the defendant Board sets the rates and collection-disbursement procedure for tuition and fees at the University, a student-government agency, the Publications Board, publishes *The Daily Tar Heel.s, The editor of the paper is a student elected by the student body, and has full authority over the* paper's content and (with other editors) selection of staff members.

The District Court rejected the plaintiffs' claims that their rights of free speech and free association had been violated by the requirement that students effectively subsidize a publication which consistently advocates viewpoints contrary to those held by plaintiffs. The court found as matters of fact that, while both *The Daily Tar Heel* and its editor are "manifestations of state action", neither the University nor the paper imposes or attempts to impose any political, philosophical or religious "orthodoxy" on any individual or group. Rather, the court viewed the paper as an important journalistic "laboratory", and part of the total "educational experience" of all the students.

In terms of impact on the legal system and on public thinking, the right to refrain from speech is the remote side of a scrupulously polished coin, the right of free speech. Many jurists, perhaps most notably Hugo Black, *Lathrop v. Donohue,* 367 U.S. 820 (1961) (Black, J., dissenting) have taken seriously the question: Does a state institution have a right to require an individual to support the propagation of views he opposes? In this limited space will be attempted an overview of the problem, with reference to the equally confused question of "state action" only as it bears on the right not to speak.

The earliest direct antecedent of *Arrington* to reach the Supreme Court was *Railway Employees' Dept. v. Hanson,* 351 U.S. 227 (1956). Plaintiffs were railroad employees faced with an amendment to the Railway Labor Act, 45 U.S.C. sec. 152, subd. 11, permitting union-shop contracts in the industry despite state right-to-work laws. The Court rejected plaintiffs' contentions that such agreements would force them into objectionable political and ideological associations, beyond the statutory collective-bargaining function, in order to keep their jobs. An entire agreement otherwise valid could not be enjoined, said the Court, where plaintiffs had not shown any specific impositions upon their rights beyond the dues requirement, which was condoned under the Commerce Clause.

The employees in a later Railway Labor Act case, *International Association of Machinists v. Street,* 367 U.S. 740 (1961), wisely alleged with particularity specific union expenditures which they found objectionable on political or ideological grounds. While the Court found for plaintiffs on the merits, it did so not as a matter of upholding their First Amendment rights, but through an interpretation of the Act that made the union's political expenditures *ultra vires* its statutory authorization. *Street's* companion case, *Lathrop, supra,* resulted in yet another retreat by the Court from the constitutional

issue. There the Court held that compulsory membership in a state bar engaged in objectionable political advocacy was not unconstitutional, where plaintiff failed to show the percentage of his dues used objectionably, his own views, and the nature of the legislation supported by the bar. Furthermore, plaintiff's right of association was held not infringed by a "mere" requirement of dues payments. This latter theme was picked up and expanded in *Veed v. Schwartzkopf,* 353 F. Supp. 149 (D. Neb. 1973), which is factually and legally indistinguishable from *Arrington.*

The Court in *Arrington* found the free speech issue discussed in *Lathrop* to be "squarely presented in the case at hand." *Arrington* at 27. Justice Harlan's concurring opinion in *Lathrop* was used by the Court here to show that no possible infringements on plaintiffs' free speech could arise from compelled support of *The Daily Tar Heel.* Thus, the reduction of plaintiffs' economic ability to further their views was deemed *de minimis* given the proportion of fees used for the paper; *The Daily Tar Heel's* positions were held not to be imposed on plaintiffs, for they were not members of any group for which the paper spoke;

and use of mandatory fees was not seen as "drowning out" plaintiffs' own voices, since they had an equal opportunity with others to influence or gain control of the paper's content.

The District Court's finding of fact that the pages of *The Daily Tar Heel* are open to adverse comment weakens plaintiffs' contention that consistently objectionable orthodoxy, rather than educational dialogue, is what they are forced to finance. Harlan's arguments in *Lathrop* all seem to presuppose that, for a finding of free speech violations, the activity in question must have directly lessened the plaintiffs' ability to express their views.

Findings of fact in *Arrington* state that the paper received approximately $54,800.00 from the Student Activities Fee in 1972-73 and that the appropriation has exceeded $30,000 every fiscal year since 1968. Given the paper's access to such sums obtained under state fiat, how could one maintain the plaintiffs' voices could not have been "drowned out" through such exactions? Other findings demonstrate the extent of plaintiffs' disagreement with positions taken by the paper. The disagreement ranges from international to campus policy and candidates, and

includes racial issues, Vietnam, the Equal Rights Amendment, abortion, bussing, *ad infinitum.*

The Daily Tar Heel thus seems to be engaged in regular espousement of views consistently opposite those of plaintiffs. While plaintiffs may have some opportunity of expression in some place in the paper, they could never hope to counter the effects of daily publication — which they must help finance — of various adverse views without assuming the further burden of an enormous input of time, people or money into systematized counter-exposition. Justice Harlan's arguments focus solely on the constancy of plaintiffs' sphere of activity. They ignore that sphere's *relative* diminishment due to compelled aggrandizement by plaintiffs of their adversaries' positions. In this respect, the arguments seem woefully inadequate to cope with the problem presented here.

The ultimate free-speech issue in *Arrington* has proved to be whether plaintiffs have a right to *effective* speech, or, alternatively, whether the state may discriminate amongst ideas. A helpful analogy may be found in the Supreme Court's familiar holding that a state may not require production of an organization's membership lists if the risk of divulgement would destroy the effectiveness of the members' association. *N.A.A.C.P. v. Alabama,* 357 U.S. 449 (1958). Some authority more obviously relevant does exist. *Police Dept. of City of Chicago v. Mosley,* 408 U.S. 92 (1972) (ordinance forbidding all picketing in school area except labor picketing struck down as favoring some ideas over others); *Bonner-Lyons v. School Commission,* 480 F2d 442 (1st Cir 1973) (schools for notices against bussing until fair opportunity afforded others with differing views to use same channels).

The District Court rejected also the plaintiffs' second major contention: that the use of public funds and facilities "results in the establishment by the State of particular viewpoints and religious beliefs in violation of the First Amendment." *Arrington* at 35. Earlier in the opinion the Court had ruled that both *The Daily Tar Heel* and its editor were sufficient manifestations of "state action" to justify constitutional inquiry into their status and procedures. However, the Court later noted that this finding did not entail the conclusion that paper and editor represented state action for *all* purposes. *Arrington* at 36.

In a sense, "state action" reappears in substantive form to govern the decision of the "establishment" issue. The more liberal test available for the existence of a favored orthodoxy would be that the state activity in question merely makes it possible or inevitable that plaintiffs' rights would be violated, though the state be not directly involved in the infringement. *Kerr v. Enoch Pratt Free Library,* 149 F2d 212 (4th Cir. 1945), *cert. denied,* 326 U.S. 721 (1945). The stricter test for the establishment of viewpoints would require that the state be directly involved in the infringement with the intention of furthering a governmental progarm or viewpoint.

The liberal test, proposed by plaintiffs, would be met in *Arrington* by the use of the Fee and rent-free facilities for the paper. Defendants object that such a test is confined to religion-establishment cases, and that free-speech cases have always used the stricter test. Brief For Appellees at 22. Defendants cite *Joyner v. Whiting,* 477 F2d 456 (4th Cir. 1973), (state university could not cut off cunds from paper on grounds of "state action" behind paper's opinions) on this point; *Joyner* in turn cites no precedent, so the point is probably quite debatable.

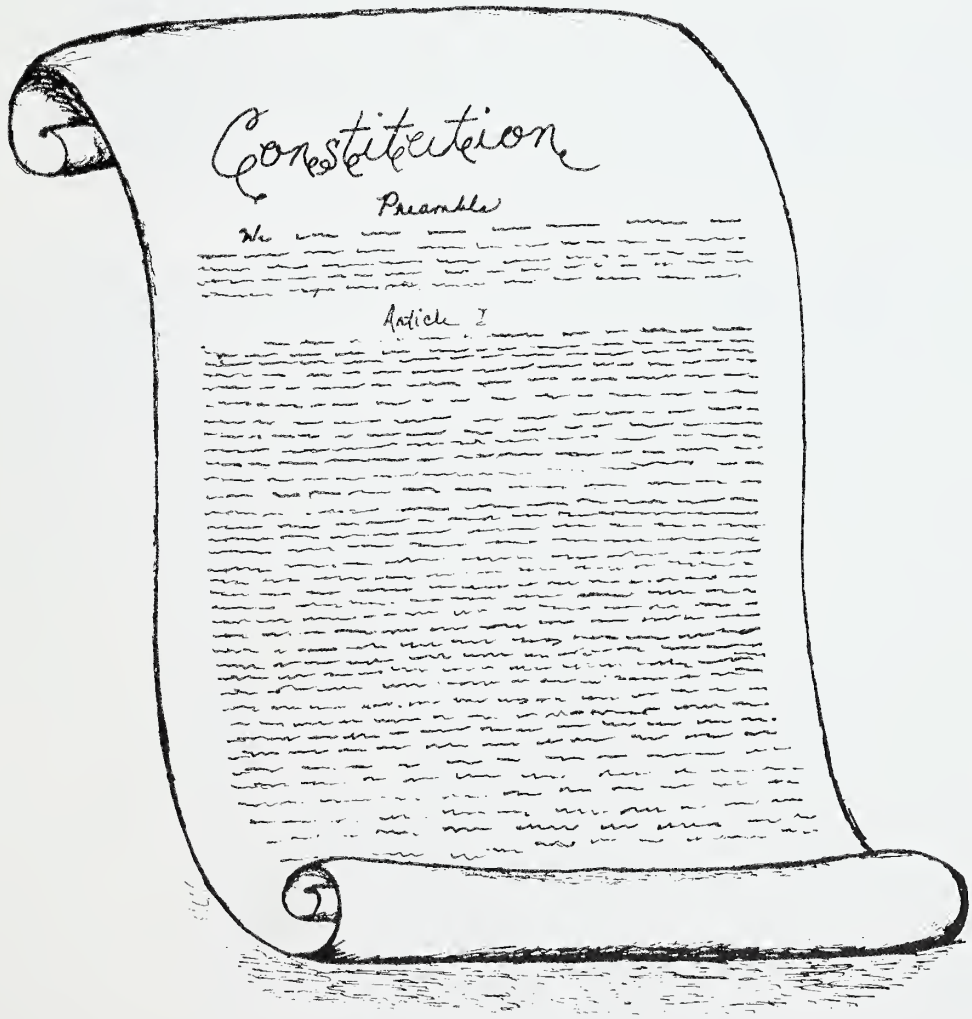
The stricter test, adopted by the court in *Arrington,* would not have been met in that case unless the University or other state agency had set out conditions or standards for the paper to meet in its journalistic content, and had done so with a view to discriminating in favor of some viewpoint propagated by the state. The weakness in this test is that the effect on plaintiffs' "voice" is the same whether the state or its private favorites determine

the opposing view's content: that "voice" suffers relative diminishment.

In support of its stricter test, the court quotes the *Joyner* case, supra at 461, to the effect that governments may constitutionally advocate particular positions. "What is condemned by the free speech guarantee . . . is not advocacy by the government, but rather conduct which limits similar rights guaranteed to individual members of society. *Arrington* at 36-37. What the cases so holding seem to forget is the distinction between government's supplying information to the public as to its policies, and government's becoming a participant in public controversies. Against the latter there is at least the prudential objection that government's involvement in public-policy debate would mean virtual government control of its own input. *Bonner - Lyon,* supra.

The only thing clearer from a reading of *Arrington* than the difficulty of the issues is the importance of the ultimate outcome for individuality in America. In an age where quasigovernmental organizations proliferate geometrically and controversy is seen as somehow purgative of the social phlegm, the average citizen is led to place a premium on the right to non-involvement or silence. At this stage of the game, only many more *Arringtons* can be confidently predicted.

Robert E. Morey



ALUMNI NEWS

PROSPECTIVE EMPLOYMENT STATUS FOR THE 1975 GRADUATES OF THE LAW SCHOOL

When economic conditions have been good, law graduates have found themselves in an enviable position. Being greatly in demand, the graduate's problem was not one of getting a job, but deciding which job to take. With the economy in a recession, however, the 1975 graduates of the Law School are not faced with a problem of deciding between job alternatives, but with a problem of getting a job. The gloomy economic picture is making members of the third year class scramble to secure future employment. When the class of 1975 enrolled three years ago, not many of its members expected this difficulty in obtaining legal employment after graduation.

Employment of lawyers has been a popular subject of many magazines of national distribution recently. The story that is being promulgated most often is that there is an oversupply of lawyers and that graduates will find that there is no need for their services. This does not appear to be the case in North Carolina, since the State has one of the lowest ratios of lawyers to population in the United States. As over eighty percent of the third year class have indicated that they intend to remain in North Carolina, the theory of too many lawyers does not appear to apply to the graduates of the Law School. It seems that the sole culprit in the employment picture is the stagnant economy.

While it is too early to make predictions as to the employment of this year's class, a survey conducted in early February indicates that about fifty percent of the class have confirmed jobs. This percentage is about the same as the Class of 1974 enjoyed, but Assistant Dean and Placement Director Buddy O.H. Herring thinks that last year's class had more potential prospects at this time than does the class this year. Dean Herring has directed the activities of the Placement Office, which has included four mailings to all law firms in North Carolina and numerous telephone calls to the Law School's alumni probing them about possible openings for the

School's graduates. Since the economy has many firms adopting a cautious attitude toward hiring new attorneys, the task of placement is a difficult one.

Many small firms do not appear to be hiring, and perhaps the depressed economy is responsible. With high interest rates in effect in the money markets, home and industrial construction has decreased. The effect on the small firm is that there is less real estate work to be done, with a resulting decline in revenues. While most lawyers do not depend exclusively on real estate for their income, many do find that title money is a necessary and integral part of firm income. Since this income has decreased, many firms have become wary of adding any additional expense to the firm's ledger, including hiring more attorneys. If the economy appears to improve soon, many firms will decide to hire.

A particular problem in placing the graduates of the Law School is that many firms, especially small ones, do not notify the Placement Office when they decide to hire. Attorneys will wait as long as possible before they decide to hire, and then hire whomever walks in the firm door at the right moment. While the result may prove satisfactory in many instances, the firm would do better to ask the Placement Office for resumes of graduates who might suit their particular needs in order to make an informed choice when hiring. Dean Herring expects that as the Placement Office becomes better known many firms will decide to use it in the future.

While there is not a crisis in the employment of the Law School's 1975 class, the declining economy has cast a pall of gloom over the bright outlook that has been enjoyed by graduates in recent years. The Placement Office feels that ninety percent of the 1975 class will be employed after the July bar examination. The remaining ten percent may be unemployed due to a specific geographic or career preference. Although graduation is being eagerly anticipated, of prime concern to the third year class in 1975 is the economy and its effect on the job market.

Mike Joseph

CLASS NOTES

1932

FRANK U. FLETCHER has opened an office in Raleigh, N.C., at Branch Bank and Trust Company for the general practice of law with emphasis on Communications Law. He is a past president of the Federal Communications Bar Association and director of the National Association of Broadcasters. His address is 8600 Fenway Drive, Bethesda, Md. 20034.

1949

RAY F. SWAIN has returned to the general practice of law in Siler City, N.C., after spending 23 years as General Manager of Siler City Mills, Inc. His address is Homewood Acres, Siler City, N.C. 27344.

E. MURRAY TATE, JR., is practicing law in Hickory, N.C., with Wake Forest graduates Carroll W. Weathers, Jr., and Charles R. Young. He is city attorney for Hickory and will go on the North Carolina Baptist Convention General Board in 1975. His address is 1807 5th Street Northwest, Hickory, N.C.

1951

McNEILL WATKINS is General Counsel of Texaco, Inc., and has recently moved to Florida and passed the Florida bar.

1953

EMORY M. SNEEDEN has been promoted to Brigadier General in the United States Army. According to the records of the School, General Sneeden is the first graduate of the School of Law to be promoted to General in the Army. He is Chief of the United States Army Legal Services Agency.

1957

EDWARD S. LASSITER is now a Lieutenant Colonel in the Army Jag Corps. His address is Box 369, Fort Amador, Canal Zone.

1960

BRUCE B. BRIGGS has been appointed by Governor James Holshouser as a Superior Court Judge in North Carolina.

1961

CHARLES M. DAVIS is practicing law in Louisburg, N.C. He is former Franklin County Solicitor and resides at Edward Lane, Louisburg, N.C. 27549.

1964

E. RAYMOND ALEXANDER has been elected District Attorney for the Eighteenth Judicial District in North Carolina.

1965

ELLIS L. "SONNY" AYCOCK has left the firm of Stevens, McGhee, Aycock, Morgan and Lennon and is now practicing law as a sole practioner in Wilmington, N.C. "Sonny" is enjoying being a sole practitioner "and recommends it to men who like independence." His address is Rt. 3, Box 344, Wilmington, N.C. 28401.

JERRY L. EAGLE announces the birth of a son, Brett Kyle, on November 22, 1974. He is married to the former Mary Upright and has a daughter, Shana Leigh. He is associated with Jefferson Standard Life Insurance Company, and his address is 3304 Charing Cross Road, Greensboro, N.C.

1967

W. BAILEY WATSON has become a partner in the firm of Thompson, Watson & Rozier, in Charleston, S.C. The partnership is engaged in the general practice of law. His address is 2124 Clayton Avenue, Charleston, S.C. 29407.

1968

WILLIAM T. JEFFRIES is now a partner in the firm of Lane, Helms, and Jeffries in Charlotte, North Carolina.

1970

MAX E. JUSTICE has become associated with the firm of Grier, Parker, Poe, Thompson, Bernstein, Gage and Preston in Charlotte, North Carolina.

E. CARRINGTON BOGGAN, who was formerly with the firm of Rogers, Hoge, and Hills in New York City, is now Division Counsel with American Home Products in New York City.

JOHN BARLOW is now Secretary and Counsel of the C. Douglas Wilson & Co. in Greenville, South Carolina. He recently passed the South Carolina Bar Exam.

HARRY CLENDENIN is presently engaged in trial practice in Greensboro, N.C. He is current President of the Young Lawyers Section, Greensboro Bar Association, and also N.C. Coordinator of the N.C. Young Lawyers Section of the N.C. Bar Association. The Clendinins have two daughters, Katherine and Anne.

WARREN L. PATE has joined the firm of Hosteller and McNeill in Raeford, N.C. He was recently discharged from the Army where he served for three years in the Judge Advocate General Corps. His address is 203 Central Avenue, Raeford, N.C.

CHESTER G. SCHULTZ has been practicing law in Gettysburg, Pa., and has formed the partnership of Bulleit & Schultz to engage in the general practice of law. His address is Adams County National Bank Building, Gettysburg, Pa. 17325

R. TERRY BENNETT was admitted to the Kentucky Bar in April, 1974, and has formed the firm of Skeeters and Bennett. He was city attorney for West Point, Ky. He is also a member of the North Carolina State Bar, and his address is 926 South Woodland Drive, Radcliff, Ky. 40160.

H. JONES NORRIS, JR., is residing at 4430 Gorman Drive, Lynchburg, Virginia, 24503.

1971

JOHN H. NICHOLSON, III, is leaving the Judge Advocate General Corps of the United States Army, and he will be entering private practice in Statesville, North Carolina, with Jay F. Frank. The firm will be engaged in the general practice of law. His address is Box 147, Statesville, North Carolina, 28677.

STEPHEN PATTERSON is engaged in the general practice of law in Waynesboro, Pennsylvania.

1972

DEBORAH A. HENDERSON has been promoted to Legal Officer and Assistant Secretary of the North Carolina National Bank Mortgage Corporation in Charlotte, North Carolina.

STEPHEN SURLES has become a partner in the firm of Weeks, Muse and Surles in Dunn, North Carolina.

1973

JAMES R. FOLEY is associated with the firm of Lutz, Fay, and Foley in Huntsville, Alabama. He is engaged in the general practice of law, with offices at Suite 52, The Terrace, Central Bank Building.

1974

ROGER T. HALEY is associated in the general practice of law with Angelo S. Ferrante in Trenton, New Jersey. His address is 850 Park Avenue, Trenton, New Jersey, 08629.

GEORGE N. HAMRICK is associated in the general practice of law with the firm of Kirk & Ewell in Wendell, North Carolina. His address is P.O. Box 201, Wendell, North Carolina, 27591.

CHARLES COPPAGE is now serving in the United States Army, Judge Advocate General Corps. His address is 3508 South Wakefield, Arlington, Virginia, 22206. He is now a Captain.

RICK SHUMATE is associated with the firm of Weinstein and Weinstein in Greensboro, North Carolina.

LYNN RUSSELL MADER is associated with George Charles Williams in the general practice of law in Wellsboro, Pennsylvania.

JANE ATKINS is associated in the North Carolina Alcoholic Beverage Control Board, Legal Division, in Raleigh, North Carolina.

LARRY BOWMAN is associated with Folger and Folger in Mt. Airy, North Carolina.

JOEL McCONNELL is a partner in the firm of Peebles and McConnell in Winston-Salem, North Carolina.

PAUL PINSON has recently taken and passed the West Virginia bar examination

CARROLL TURNER has recently opened an office for the general practice of law in Mt. Olive, North Carolina.

JOHN W. WALL, JR. is now associated with the firm of Dees, Johnson, Tart, Giles, and Tedder in Greensboro, North Carolina.

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SONNET XLIII or ODE TO A LAWYER

How can I sue thee? Let me count the ways.
I can sue thee to the depth and breadth and height
My imagination can reach, when feeling out of sight
For the ends of Truth and ideal Justice.
I can sue thee for the level of every day's
Maximum wages, with pensions and fringe benefits.
I can sue thee quasi in rem as thou rusheth from the State;
I can sue thee in personam, as thou doest thy daily tasks.
I can sue thee with the passion put to use
In my old law exams, and with my first-year student's faith.
I can sue thee with a knowledge I seemed not to have
On my Nig exams - I can sue thee with the breath,
Smiles, tears of all my acting! - and, if the jury choose,
I shall but collect more from thee after death.

by Rebecca Ferguson, with many
an apology to Ms. Browning, who
never attended law school